not made a federal income tax return. In cases of disputed federal income tax liability, it is only the federal courts that have jurisdiction to properly determine an individual's federal adjusted gross income. This Court needs to hold that neither the Connecticut Department of Revenue Services nor the Connecticut courts have authority to determine an individual's "adjusted gross income of a natural person with respect to any taxable year, as determined for federal income tax purposes and as properly reported on such person's federal income tax return."

The Connecticut Superior Court has in effect ruled that statutory limits on the State's taxing power need not be adhered to so long as the state Constitution imposes no such limits. The unambiguous words of the state statutes clearly show that the state income tax system is dependent on the federal income tax system and yet the state courts have ruled that the statutory provisions can be enlarged by implication in order to eliminate the dependence on the federal tax system. The state's statutes no longer provide the state authority to determine an individual's "adjusted gross income" as defined by C.G.S. section 12-701(a)(19) without using the amount that has been reported on the individual's federal income tax return. None of the state statutes provide the state the means to determine "adjusted gross income" when there is no federal income tax return either made by the individual or made by federal authorities under U.S.C. Title 26 section 6020. The Connecticut Superior Court has expanded the operation of C.G.S. section 12-701(a)(19) by implication to matters not specifically pointed out, that is, to the situation where there is no amount reported on a federal income tax return. This Court has stated that the courts shall not correct perceived shortcomings in the legislative scheme: "No mere omission, no mere failure to provide for contingencies, which it may seem wise to have specifically provided for, justify any judicial addition to the language of the statute." U.S. v. Goldenberg, 168 U.S. 95, 102.

The Connecticut Superior Court has also ruled that the unambiguous words of C.G.S. section 12-735(b) need not be adhered to when there is no federal income tax return to refer to. The statute clearly states that the commissioner must make a return under section 12-735(b) "according to the form prescribed." The CT-1040 income tax form clearly states that the amount on line 1 is to come from a federal income tax return. The state courts have ruled that when there is no federal income tax return and when no federal income tax has been assessed, the Connecticut Commissioner of Revenue Services may make her own determination of "the adjusted gross income of a natural person with respect to any taxable year, as determined for federal income tax purposes and as properly reported on such person's federal income tax return." There is no statutory authority supporting such a conclusion. An amount which has not been reported on a federal income tax return does not meet the requirement of line 1 of form CT-1040 and therefore doesn't meet the unambiguous requirement of section 12-735(b). The decisions by the Connecticut courts are in conflict with this Court's numerous rulings concerning both the weight that is to be given to the plain language of tax statutes and the requirements of due process.

The Connecticut courts have undoubtedly extended the provisions of C.G.S. sections 12-701(a)(19) and 12-735(b), by implication, beyond the clear import of the language used, and have enlarged their operations so as to embrace matters not specifically pointed out, such as the case when there is no federal income tax return, when no federal income tax has been assessed, and when federal authorities have not made a determination of an individual's federal adjusted gross income.

When neither the IRS nor the federal courts have made a determination of an individual's federal adjusted gross

income, state government officials have no authority to make a non-zero determination of an individual's "adjusted gross income of a natural person with respect to any taxable year, as determined for federal income tax purposes and as properly reported on such person's federal income tax return."

I. This Court's previous rulings concerning tax statutes

This Court has repeatedly stated that federal tax statutes are to be applied in accordance with their plain language and that neither executive agencies nor the courts have authority to "extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out." The following citations are from but a few of these rulings:

> U.S. v. Goldenberg, 168 U.S. 95, 102:
>
> The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used. He is presumed to know the meaning of words and the rules of grammar. The courts have no function of legislation, and simply seek to ascertain the will of the legislator. It is true there are cases in which the letter of the statute is not deemed controlling, but the cases are few and exceptional, and only arise when there are cogent reasons for believing that the letter does not fully and accurately disclose the intent. No mere omission, no mere failure to provide for contingencies, which it may seem wise to have specifically provided for, justify any judicial addition to the language of the statute...
>
> ...Certainly, there is nothing which imperatively requires the court to supply an omission in the statute, or to hold that congress must have intended to do that which it has failed to do.

Gould v. Gould, 245 U.S. 151, 153:
In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the government, and in favor of the citizen.

White v. Aronson,, 302 U.S. 16, 20:
Where there is a reasonable doubt as to the meaning of a taxing act it should be construed most favorably to the taxpayer. Gould v. Gould, 245 U.S. 151, 38 S.Ct. 53. 'Tax laws, like all other laws, are made to be obeyed. They should therefore be intelligible to those who are expected to obey them.' Philadelphia Storage Battery Co. v. Ledlerer (D.C.) 21 F.(2d) 320, 321, 322.

Hassett v. Welch, 303 U.S. 303, 314:
. . . if doubt exists as to the construction of a taxing statute, the doubt should be resolved in favor of the taxpayer . . .

Crane v. Commissioner, 331 U.S. 1, 6:
In the first place, the words of statutes-including revenue acts-should be interpreted where possible in their ordinary, everyday senses.

Commissioner v. Korell, 339 U.S. 619, 627:
We adopt the view that "bond premium" in 125 means any extra payment, regardless of the reason therefor, in accordance with the firmly established principle of tax law that the ordinary meaning of terms is persuasive of their statutory meaning.

> Hanover Bank v. Commissioner, 369 U.S. 672, 687:
> A firmly established principle of statutory interpretation is that "the words of statutes - including revenue acts - should be interpreted where possible in their ordinary, everyday senses." Crane v. Commissioner, 331 U.S. 1, 6.

The rules that apply to federal tax statutes, stated by this Court and cited above, must also apply to state tax statutes by virtue of the Fourteenth Amendment to the United States Constitution. It is clear that C.G.S. section 12-701(a)(19) provides no authority to Connecticut state officials to make a non-zero determination of an individual's "adjusted gross income of a natural person with respect to any taxable year, as determined for federal income tax purposes and as properly reported on such person's federal income tax return" when there exists no federal income tax return for the individual and when federal authorities have neither assessed any federal income tax liability against the individual nor have made a determination of the individual's federal adjusted gross income.

II. Connecticut's income tax imposition statutes

As the Connecticut Superior Court stated in its memorandum of decision, the Connecticut income tax is not imposed on federal taxable income, it is imposed on Connecticut taxable income. However, the Connecticut Superior Court is incorrect in definitively making the overly broad statement that "The power of the federal government to tax and the power of the state government to tax are not inextricably tied together. They are separate and distinct taxing powers." As the State's income tax statutes are currently written, Connecticut taxable income is a function of federal adjusted gross income as actually reported on a federal income tax return. The State's income tax system is dependent upon the federal income tax system because the starting point for determining an individual's Connecticut

taxable income is the individual's "adjusted gross income of a natural person with respect to any taxable year, as determined for federal income tax purposes and as properly reported on such person's federal income tax return."

A. The Connecticut General Assembly has enacted that Connecticut income tax is not based upon arbitrary income or any and all income. Connecticut income tax is based upon "Connecticut taxable income":

> Conn. Gen. Stat. Sec. 12-700. Imposition of tax on income. Rate. (a) There is hereby imposed on the Connecticut taxable income of each resident of this state a tax...

Therefore, in order to be liable for Connecticut income tax, one must receive what is defined as "Connecticut taxable income."

B. "Connecticut taxable income" is "Connecticut adjusted gross income" minus exemption:

> Conn. Gen. Stat. Sec. 12-701(a)(8) "Connecticut taxable income of a resident" means the Connecticut adjusted gross income of a natural person with respect to any taxable year reduced by the amount of the exemption provided in section 12-702.

Therefore, in order to have "Connecticut taxable income", one must receive what is defined as "Connecticut adjusted gross income."

C. "Connecticut adjusted gross income" is "Adjusted gross income" plus specific modifications (none of the modifications are applicable to the petitioner's case):

> Conn. Gen. Stat. Sec. 12-701(a)(20) "Connecticut adjusted gross income" means adjusted gross income, with the following modifications. . .

Therefore, in order to have "Connecticut adjusted gross income", one must receive what is defined as adjusted gross income.

D. The Connecticut General Assembly has enacted that under Connecticut's income tax laws, "Adjusted gross income" is defined as:

> Conn. Gen. Stat. Sec. 12-701. Definitions. (a) For purposes of this chapter:
> (19) ***"Adjusted gross income"*** means the adjusted gross income of a natural person with respect to any taxable year, as determined for federal income tax purposes ***and as properly reported on such person's federal income tax return***. (emphasis added)

Through enactment of four related statutes, namely 12-700, 12-701(a)(8), 12-701(a)(20), and 12-701(a)(19), the Connecticut General Assembly has clearly specified that the basis for the Connecticut income tax is federal adjusted gross income, as determined for federal income tax purposes, ***and as properly reported on an individual's federal income tax return.*** It logically follows that the starting point for determining Connecticut income tax is the determination of "Adjusted gross income" as defined by section 12-701(a)(19). Therefore, if "Adjusted gross income" is not determined in accordance with section 12-701(a)(19) and is unlawful and invalid, then it logically follows that Connecticut income tax based upon that number is also unlawful and invalid.

The first step in calculating Connecticut income tax is to determine "Adjusted gross income" in accordance with section 12-701(a)(19). If the number used for "Adjusted gross income" does not meet the stautory definition within section 12-701(a)(19), then the number has no lawful basis and is invalid. All subsequent numbers which are based on the invalid number for "Adjusted gross income" are also invalid, rendering the assessment unlawful and void.

It is clear that the provisions within section 12-701(a)(19) inextricably link the Connecticut income tax system to the federal income tax system. It is clear that the basis for the

Connecticut income tax is federal adjusted gross income, as determined for federal income tax purposes, ***and as properly reported on an individual's federal income tax return.*** When there is no federal income tax return, there can be no non-zero determination of an individual's "adjusted gross income" under section 12-701(a)(19).

III. Legislative history of C.G.S. section 12-701(a)(19)

Prior to 2001, Conn. Gen. Stat. section 12-701(a)(19) did not include the clause "and as properly reported on the individual's federal income tax return." In 1999 the Connecticut Supreme Court heard the Berkley v. Gavin case and considered the proper interpretation of the language in the unrevised statute. In 2000, the Court stated the following:

> Berkley v. Gavin, 253 Conn. 761, 772:
> The central question that §12-701(a)(19) raises, but does not answer, is whether the phrase "as determined for federal income tax purposes," means as determined in accordance with federal income tax methodology, or as reported on a taxpayer's federal income tax return. Although there is no legislative history on this point, an examination of our prior case law leads us to conclude that the former interpretation is the correct one...

The General Assembly subsequently rejected the Connecticut Supreme Court's Berkley v. Gavin decision in 2001, and has legislated that an individual's federal adjusted gross income is as determined under the federal income tax system by revising section 12-701(a)(19) and adding the clause, "and as properly reported on such person's federal income tax return."

Since 2001, Connecticut General Statutes section 12-701(a)(19) has stated:

> "Adjusted gross income" means the adjusted gross income of a natural person with respect to any taxable year, as determined for federal income tax purposes

and as properly reported on such person's federal income tax return.

In 2001, Senator Looney made the only comments regarding the revision of section 12-701(a)(19) during legislative floor debate. Senator Looney said the following on the Senate floor:

> There is a further provision within Section 35 and 36 of the bill that specifies that the starting point for Connecticut AGI is federal AGI. This relates to the Berkeley [sic] decision of the Connecticut State Supreme Court last year and in effect adopts the position of the descent [sic] by Chief Justice McDonald [sic] in that provision.
> [Senator Looney, Connecticut Senate Floor, Wednesday June 27, 2001, Senate Bill No. 2001 June Special Session, Public Act No. 01-6]

No other legislator in the House or Senate disputed Senator Looney's comment that "the starting point for Connecticut AGI is federal AGI". It follows that the Connecticut income tax system is intentionally wholly dependent upon the federal income tax system and of the existence of a reported amount on an individual's federal income tax return.

Senator Looney noted that it was the intent of the legislation to adopt the position of the dissent in the Berkley case. In his dissent, the Chief Justice stated the following about the unrevised statute:

Berkley v. Gavin, 253 Conn. 761, p.782:

> In contrast to those cases, there is no explicit reference to the federal tax code in the income tax statute at issue in this case. Rather, the statute refers to "adjusted gross income ... as determined for federal income tax *purposes*." (Emphasis added.) General Statutes §12-701(a)(19). For reasons set forth more fully later in this dissenting opinion, I believe that this phrase simply refers to a number, not a

> methodology. Accordingly, I do not believe that the statute contains any term, phrase or concept that requires interpretation by reference to the federal tax code. Therefore, I am not persuaded that the cases relied on by the majority support its conclusion that §12-701(a)(19) incorporates federal tax methodology. Rather, that statute incorporates the specific number derived from that methodology.

Federal adjusted gross income can only be determined from rents, royalties, alimony, or other income by reference to the federal tax code. There are no provisions within Connecticut law which explain how to determine an individual's federal adjusted gross income. Such a determination can only be made by referring to the federal income tax code. Chief Justice Sullivan concluded that the unrevised statute did not contain "any term, phrase, or concept that requires interpretation by reference to the federal tax code." To emphasize this point, the General Assembly subsequently revised the statute by adding the words "***and as properly reported on such person's federal income tax return***." The General Assembly clarified the intent of the statute. The General Assembly ***requires*** the Department of Revenue Services and the Connecticut courts to use the federal adjusted gross income that is actually ***reported on a federal income tax return***. The General Assembly has expressly prohibited the Department of Revenue Services and the Connecticut courts from making their own determinations of federal adjusted gross income.

Chief Justice Sullivan also noted that the Connecticut Form CT-1040 requires the taxpayer to report on line one the amount from a federal income tax return. Again, the starting point for Connecticut AGI is federal AGI as reported on the federal income tax return. Chief Justice Sullivan stated "Accordingly, I believe that that phrase simply means what it says: adjusted gross income as determined for purposes of calculating the taxpayer's federal income tax. ***In other***

words, it is the adjusted gross income reported on the taxpayer's federal income tax form. " (emphasis added)

Berkley v. Gavin, 253 Conn. 761, 786:

> My conclusion is supported by a comparison of Connecticut Form CT-1040 for the 1994 tax year, issued by the department of revenue services, with United States Individual Income Tax Return Form 1040 for the same tax year. The Connecticut form does not require the taxpayer to calculate federal adjusted gross income in accordance with the federal methodology. Rather, line 1 of the Connecticut form, which provides, "Federal Adjusted Gross Income (from Federal Form 1040, Line 31 or Form 1040A, Line 16, or Form 1040EZ, Line 3)," simply requires the taxpayer to report the line item amount calculated on the federal form. It fairly may be assumed that the legislature was aware of the form and content of the 1994 Connecticut Form CT-1040. The legislature has never suggested that that form was inconsistent with the intent of the tax legislation that it was designed to implement . . .

The preceding argument by Chief Justice Sullivan has been formally and clearly adopted into law by the General Assembly by adding the clause ***"and as properly reported on such person's federal income tax return"*** to section 12-701(a)(19). Senator Looney's Senate floor comments explicitly stated that the General Assembly was adopting the position of the Chief Justice's dissent. The General Assembly connected the two requirements within section 12-701(a)(19) with the conjunction ***"and"***. Elementary rules of logic and English grammar prove that a number does not constitute an amount for "Adjusted gross income" unless the number meets both of the requirements of the statute simultaneously. The General Assembly has specifically prohibited taxpayers, the DRS, and the Connecticut courts from using an amount for "Adjusted gross income", as defined by section

12-701(a)(19), unless the amount has been reported on a federal income tax return.

Section 12-701(a)(19) does not authorize the DRS or the Connecticut courts to make their own determinations of "Adjusted gross income" even if they believe an individual has improperly reported an amount on his federal income tax return. If an individual has improperly reported an amount for his adjusted gross income on his federal income tax return, or if he hasn't made a federal income tax return, section 12-701(a)(19) requires state officials to use a number that federal authorities have reported on the individual's federal income tax return under U.S.C. Title 26 section 6020.

Before C.G.S. section 12-701(a)(19) was revised in 2001, the Connecticut Supreme Court ruled that the DRS and Connecticut courts did not have to use a number that was reported on the individual's federal income tax return, but rather could make their own determinations of an individual's federal adjusted gross income in accordance with federal income tax methodology. The General Assembly then revised the statute by adding the clause "and as properly reported on such person's federal income tax return." It is clear that the statute makes no provision to determine an individual's "adjusted gross income of a natural person with respect to any taxable year, as determined for federal income tax purposes and as properly reported on such person's federal income tax return" when there is no federal income tax return and when federal authorities have not made a determination of an individual's federal adjusted gross income and when no federal income tax has been assessed. One can only guess how the Connecticut General Assembly would have intended an individual's "adjusted gross income" be determined in such a circumstance. Guessing the legislature's intent concerning unprovided for contingencies is the essence of "doubt." This Court has ruled that doubt concerning tax statutes must be resolved in favor of the taxpayer and against the government.

Gould v. Gould, 245 U.S. 151, 153:
In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the government, and in favor of the citizen.

White v. Aronson, 302 U.S. 16, 20:
Where there is a reasonable doubt as to the meaning of a taxing act it should be construed most favorably to the taxpayer. Gould v. Gould, 245 U.S. 151, 38 S.Ct. 53. 'Tax laws, like all other laws, are made to be obeyed. They should therefore be intelligible to those who are expected to obey them.' Philadelphia Storage Battery Co. v. Lederer (D.C.) 21 F.(2d) 320, 321, 322.

Hassett v. Welch, 303 U.S. 303, 314:
. . . if doubt exists as to the construction of a taxing statute, the doubt should be resolved in favor of the taxpayer . . .

IV. Connecticut General Statutes section 12-735(b)

State income tax returns made by the Connecticut Commissioner of Revenue Services under authority of Conn. Gen. Stat. Sec. 12-735(b) must be made "according to the form prescribed." The prescribed form requires that federal adjusted gross income be a number that was reported on a federal income tax return. Therefore, section 12-735(b) requires the Commissioner to use a number for "Adjusted gross income" that has been reported on a federal income tax return.

The Commissioner made an unlawful Connecticut income tax return for the petitioner for the 2001 tax year in violation of section 12-735(b). The Commissioner violated section 12-735(b) by making a return which was not in

accordance with the prescribed form. The Commissioner made her own determination of the petitioner's federal adjusted gross income and she used a number that was not reported on the petitioner's federal income tax return. Conn. Gen. Stat. Sec. 12-735(b) states the following:

> If any person has not made a return within three months after the time specified under the provisions of this chapter, the commissioner may make such return at any time thereafter, according to the best information obtainable ***and according to the form prescribed***. (emphasis added)

Section 12-735(b) clearly states that the Commissioner must make a return "according to the form prescribed." The final clause within section 12-735(b) is connected with the conjunction ***"and"***. Elementary rules of logic and English grammar prove that a return made by the Commissioner is not authorized by law unless the return is made ***"according to the form prescribed."*** The form prescribed for an individual's Connecticut income tax return is Form CT-1040, titled "Connecticut Resident Income Tax Return". Line 1 of Form CT-1040 states "Federal Adjusted Gross Income (from federal Form 1040, Line 33; Form 1040A, Line 19; Form 1040EZ, Line 4; or federal Telefile Tax Record, Line I)". Form CT-1040 is consistent with section 12-701(a)(19) and states that the amount on line 1 is to come from federal Form 1040 which is the federal income tax return, and not from forms W-2 or forms 1099, which are not federal income tax returns.

Section 12-735(b) requires the Commissioner to make a return ***"according to the form prescribed"***, which means in accordance with Form CT-1040. Form CT-1040 requires that "Federal Adjusted Gross Income" on line 1 be taken from a federal income tax return. Therefore, it logically follows that Section 12-735(b) requires that the Commissioner use a number for "Federal Adjusted Gross Income" that has been reported on a federal income tax return.

The Commissioner did not make a return for the petitioner according to the form prescribed. The Commissioner did not enter an amount from the petitioner's federal income tax return on line one of Form CT-1040. The Commissioner violated section 12-735(b) and the return made by the Commissioner is invalid, unlawful and void.

V. The courts have no function of legislation

The Connecticut courts are bound by the same broad due process requirements as this Court, by virtue of the Fourteenth Amendment to the U.S. Constitution. This Court has ruled that due process is not limited to procedure, but requires that government officials abide by their statutes:

> Chicago B. & Q. R. Co. v. City of Chicago, 166 U.S. 226, pp. 235,241:
>
> ... In determining what is due process of law, regard must be had to substance, not to form.
>
> ... 'Due process of law requirest-First, the legislative act authorizing the appropriation, pointing out how it may be made and how the compensation shall be assessed; and, second, that the parties or officers proceeding to make the appropriation shall keep within the authority conferred, and observe every regulation which the act makes for the protection or in the interest of the property owner, except as he may see fit voluntarily to waive them.'

This Court has also stated that individuals have the right to use all means allowed by law in order to decrease or even eliminate their tax liability:

> Gregory v. Helvering, 293 U.S. 465, 469:
>
> The legal right of a taxpayer to decrease the amount of what otherwise would be his taxes, or altogether avoid them, by means which the law permits, cannot be doubted. United States v. Isham, 17 Wall. 496, 506; Superior Oil Co. v. Mississippi, 280 U.S. 390,

395 , 396 S., 50 S.Ct. 169; Jones v. Helvering, 63 App.D.C. 204, 71 F.(2d) 214, 217.

Conn. Gen. Stat. section 12-701(a)(19) is the only state statute which explains how to determine an individual's "adjusted gross income" for purposes of the State's income tax. Under the Fourteenth Amendment, Connecticut residents who have not filed federal or state income tax returns are entitled to the equal protection of the provisions within 12-701(a)(19) and 12-735(b) when having their state income tax assessed. When a Connecticut resident has not filed a federal income tax return, the State only has authority to make a non-zero determination of "adjusted gross income" under section 12-701(a)(19) by referring to amounts reported on a federal income tax return made by federal authorities under U.S.C. Title 26 section 6020, provided such a return has been affirmed by the federal court of last resort. Conn. Agencies Regs. Sec. 12-727(b)-4.

There is currently no statutory provision which allows the Connecticut Commissioner of Revenue Services to make a non-zero determination of an individual's "adjusted gross income" under section 12-701(a)(19) when there is no federal income tax return either made by the individual or made by federal authorities under section 6020. During oral argument in the Appellate Court the Assistant Attorney General referred to this omission as a broad "loophole" that should be closed by the courts. This Court has repeatedly stated that it is not in the courts' powers to close perceived loopholes in federal tax statutes by judicial fiat. "**Granting the Government's proposition that these taxpayers have found a hole in the dike, we believe it one that calls for the application of the Congressional thumb, not the court's.**" Hanover Bank v. Commissioner, 369 U.S. 672, footnote 23.

Even if plainly worded statutes might arguably "wrongly" exempt income that would otherwise be taxable under differently worded statutes, this Court has repeatedly ruled that it is necessary for the legislature to change the statutes

and that the courts may not "extend their provisions, by implication, beyond the clear import of the language used." Gould v. Gould, 245 U.S. 151, 153.

Gitlitz v. Commissioner, 531 U.S. 206, 219:

> Second, courts have discussed the policy concern that, if shareholders were permitted to pass through the discharge of indebtedness before reducing any tax attributes, the shareholders would wrongly experience a "double windfall": They would be exempted from paying taxes on the full amount of the discharge of indebtedness, and they would be able to increase basis and deduct their previously suspended losses. See, e.g., 182 F. 3d, at 1147-1148. Because the Code's plain text permits the taxpayers here to receive these benefits, we need not address this policy concern.
> The judgment of the Court of Appeals, accordingly, is reversed. It is so ordered.

Commissioner v. Korell, 339 U.S. 619, 626:

> These factors may combine in a specific case to produce an effect upon revenue which to some may appear too drastic for Congress to have intended. . . If in practice these sections are causing such loss of revenue as to indicate that Congress may have erred in its balancing of the competing considerations involved, the amendment must obviously be enacted by the Congress and not the Commissioner of Internal Revenue or this Court.

Hanover Bank v. Commissioner, 369 U.S. 672, 688:

> Simply stated, an informed Congress enacted Section 125 with full realization of the existence and operation of special call provisions, but chose not to make any distinction between them and general redemption rights. Neither did the Commissioner. **Nevertheless, the Government now urges this Court to do what the legislative branch of the**

Government failed to do or elected not to do. This, of course, is not within our province.[23] The judgments are reversed.

[Footnote 23] We believe the Court of Appeals for the First Circuit was correct when it said in Fabreeka Products Co. v.. Commissioner, 294 F.2d 876, 879: **"Granting the Government's proposition that these taxpayers have found a hole in the dike, we believe it one that calls for the application of the Congressional thumb, not the court's."**

The General Assembly was fully aware that not all Connecticut residents file federal income tax returns, and yet section 12-701(a)(19) was still revised by adding the words ***"and as properly reported on such person's federal income tax return."*** During Senate floor debate, Senator Looney stated "There is a further provision within Section 35 and 36 of the bill that specifies that the starting point for Connecticut AGI is federal AGI." The final clause within section 12-735(b) clearly states that the Commissioner must make a return "according to the form prescribed." Form CT-1040 is consistent with section 12-701(a)(19) and states that the amount on line 1 is to come from federal Form 1040 which is the federal income tax return, and not from forms W-2 or forms 1099, which are not federal income tax returns. There is no statutory provision for the Commissioner to determine "adjusted gross income" under section 12-701(a)(19) by reference to federal income tax methodology using forms W-2 or 1099 in lieu of the amount reported on the federal income tax return form, form 1040.

In hindsight, it may seem to have been wise for the Connecticut General Assembly to statutorily provide a means to determine "adjusted gross income" for Connecticut income tax purposes when an individual does not file a federal income tax return and when federal officials do not make a federal income tax return for the individual under authority of U.S.C. Title 26 section 6020. But the General Assembly did

not provide for this contingency and this Court has ruled that the courts are not to legislate from the bench:

> U.S. v. Goldenberg, 168 U.S. 95, 102:
>
> ...The courts have no function of legislation, and simply seek to ascertain the will of the legislator...No mere omission, no mere failure to provide for contingencies, which it may seem wise to have specifically provided for, justify any judicial addition to the language of the statute...
>
> ...Certainly, there is nothing which imperatively requires the court to supply an omission in the statute, or to hold that congress must have intended to do that which it has failed to do.

In this case, the will of legislator is crystal clear as evidenced by the unambiguous words added to the statute, "and as properly reported on such person's federal income tax return." Senator Looney also verbally stated the intent of the legislation; "There is a further provision within Section 35 and 36 of the bill that specifies that the starting point for Connecticut AGI is federal AGI." It is clear then that the Connecticut income tax system is inextricably linked to the federal income tax system and that the amount used for an individual's "adjusted gross income" under section 12-701(a)(19) must be as actually reported on a federal income tax return. In instances when there is no federal income tax return, it is not in the courts' province to supply an omission in the statute, or to hold that the legislature must have intended to do that which it has failed to do.

VI. Conclusion

This case presents to this Court a situation where state government officials have violated the unambiguous words of two separate state taxing statutes. In doing so, the State has ignored the provisions of numerous rulings from this Court which state that "No mere omission, no mere failure to provide for contingencies, which it may seem wise to have

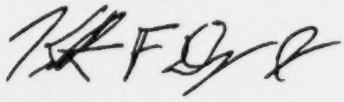
specifically provided for, justify any judicial addition to the language of the statute" (U.S. v. Goldenberg, 168 U.S. 95, 102) and "In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the government, and in favor of the citizen" (Gould v. Gould, 245 U.S. 151, 153). Therefore, action by this Court is needed to enforce the crystal clear requirements of sections 12-701(a)(19) and 12-735(b).

This Court must ensure that there is a clearly established uniform rule of due process concerning taxation, regardless of whether the controversy arises under the Fifth Amendment or under the Fourteenth Amendment, and regardless of whether the controversy concerns federal taxes or state taxes. This Court needs to explicitly rule that state governments must strictly adhere to the unambiguous words of their own tax statutes and must not expand the operation of their tax statutes beyond the provisions of the clear language in attempts to remedy the legislature's failure to provide for certain contingencies.

The Connecticut income tax system is inextricably linked to the federal income tax system through section 12-701(a)(19) and action by this Court is needed to ensure that the statute is obeyed. Action by this Court is needed to enforce the statutory limits on the State's taxing power.

For all the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,



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In The
Supreme Court of the United States

Kenneth F. Deyo Jr.,
Petitioner,

v.

Commissioner of Revenue Services,
Respondent

On Petition For Writ Of Certiorari
To The Appellate Court Of Connecticut

APPENDIX

DEYO v. LAW, No. CV 03 052 4331 (Sep. 27, 2004)
KENNETH F. DEYO, JR. v. PAMELA LAW, COMMISSIONER OF REVENUE SERVICES.
2004 Ct. Sup. 14715, 38 CLR 28
No. CV 03 052 4331
Connecticut Superior Court, Judicial District of New Britain Tax Session at New Britain
September 27, 2004
[EDITOR'S NOTE: This case is unpublished as indicated by the issuing court.]
MEMORANDUM OF DECISION
ARONSON, JUDGE TRIAL REFEREE.

The issue in this tax appeal is whether a resident of the state of Connecticut is required to file and pay the state income tax for a particular tax year when that resident has not filed a federal tax return for that same year.

The facts of this case are not in dispute. The plaintiff, Kenneth F. Deyo, Jr. (Deyo), a resident of the state of Connecticut living in Wolcott, Connecticut, earned over $120,000 during the calendar year of 2001. Deyo did not file a federal income tax return or a Connecticut income tax return for that year. Deyo did not file a federal income tax return because, as stated in his brief, he "determined that the income he received in 2001 was completely excluded for federal income tax purposes, and therefore, no federal income tax return was required to be filed under [26 U.S.C. §6012.]" (Plaintiff's Post-Trial Memorandum, dated August 27, 2004, p. 3.)[fn1] Because Deyo did not file a Connecticut income tax return, the defendant, commissioner of revenue services (Commissioner), created a return for him based on information obtained from the Internal Revenue Service. After determining that Deyo earned income in 2001 that was subject to the Connecticut income tax, the Commissioner issued a deficiency assessment against him in the amount of $5,211.42, plus penalty and interest. This assessment was

issued by notice dated August 15, 2003. On September 29, 2003, Deyo filed a protest of the deficiency assessment with the appellate division of the department of revenue services. The assessment was upheld on October 27, 2003. Deyo then filed the present appeal pursuant to General Statutes §12-730.

The plaintiff claims that the starting point for the preparation and filing of a Connecticut state income tax return is the federal adjusted gross income reported on the taxpayer's federal 1040 income tax return. The plaintiff claims that until he has filed a federal 1040 income tax return, the Commissioner has no authority to require the plaintiff to file a state tax return or to pay a tax on income earned for that particular tax year. The plaintiff further states "[n]either [the department of revenue services] nor Connecticut courts have any authority or jurisdiction to make a federal income tax return for [p]laintiff. The Congress of the United States has given authority only to the Secretary of the Treasury of the United States or his delegate to properly make and sign a required federal income tax return if none has been made by the individual." (Plaintiff's Post-Trial Memorandum of Law, dated August 27, 2004, p. 11.)[fn2]

The plaintiff's position is that the filing of a federal income tax return is a prerequisite to the filing of a Connecticut income tax return, and until a federal income tax return has been filed, there is no obligation on the plaintiff to file a state return. We disagree.

If a resident of Connecticut has taxable income, that income is subject to the state income tax irrespective of whether that taxpayer files a federal income tax return. Our taxing statutes make clear that Connecticut taxable income is not federal taxable income. General Statutes §12-701(a)(8) defines Connecticut taxable income to mean "the Connecticut adjusted gross income of a natural person with respect to any taxable year reduced by the amount of the exemption

provided in section 12-702." Connecticut adjusted gross income is defined in §12-701(a)(20) as adjusted gross income modified by income that may be taxable by the state but not taxable by the federal government, or vice versa. Finally, §12-701(a)(19) defines adjusted gross income to mean "the adjusted gross income of a natural person with respect to any taxable year, as determined for federal income tax purposes and as properly reported on such person's federal income tax return." It is the reference in §12-701(a)(19) to a federal income tax return that the plaintiff misconstrues in making his argument.[fn3] Adjusted gross income as reported on an individual's federal income tax return is merely a starting point for determining his or her Connecticut adjusted gross income. The plaintiff's interpretation would require reading into §12-701(a)(20) that Connecticut adjusted gross income is a function of federal adjusted gross income. It is not. The meaning of this statute is clear and unambiguous and devoid of any other interpretation. See Public Acts 2003, No. 03-154.[fn4]

We note that General Statutes §12-735(b) provides that if a taxpayer has not filed a state income tax return within the time required by statute, "the commissioner may make such return at any time thereafter, according to the best information obtainable and according to the form prescribed." Further, if a taxpayer has not filed a state income tax return, §12-701(a)(12) requires the taxpayer to pay 90 percent of the tax due for that calendar year. The plaintiff, in this action, has done neither. It is no answer for the plaintiff to say that since he has not filed a federal income tax return that he need not file a Connecticut income tax return. The power of the federal government to tax and the power of the state government to tax are not inextricably tied together. They are separate and distinct taxing powers. Kellems v. Brown, 163 Conn. 478, 487, 313 A.2d 53 (1972), appeal dismissed, 409 U.S. 1099, 93 S.Ct. 911, 34 L.Ed.2d 678 (1973).

The burden is on the plaintiff, as the taxpayer, to show that the Commissioner was in error in making a deficiency assessment. Leonard v. Commissioner of Revenue Services, 264 Conn. 286, 302, 823 A.2d 1184 (2003). This he has failed to do.

Accordingly, the plaintiff's appeal from the action of the Commissioner is dismissed. Judgment may enter in favor of the defendant Commissioner.

s/ Aronson
Arnold W. Aronson
Judge Trial Referee

[fn1] For some reason, not apparent to this court, the plaintiff claims that "[t]here exists no federal income tax assessment for the year 2001 against [p]laintiff or his wife. There have been no changes to [p]laintiff's self-assessment of zero federal income tax liability for the 2001 tax year. Plaintiff's 2001 federal income tax liability has not been `changed or corrected by the United States Internal Revenue Service or other competent authority,' as explained by [General Statutes] §12-727 and related regulations. Therefore, no provision of [General Statutes] §12-727 is presently applicable." (Plaintiff's Post-Trial Memorandum of Law, dated August 27, 2004, p. 10.)

[fn2] The plaintiff cites 26 U.S.C. §6020(b), titled "Returns prepared for or executed by Secretary," which states: "Execution of return by Secretary. (1) Authority of Secretary to execute return. If any person fails to make any return required by any internal revenue law or if any person fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge

and from such information as he can obtain through testimony or otherwise." (See Plaintiff's Post-Trial Memorandum of Law, dated August 27, 2004, p. 11.)

[fn3] We also note that the plaintiff's argument ignores the term "properly reported" as used in §12-701(a)(19).

[fn4] Public Act 03-154, recently enacted, directs courts "to give effect to the plain and unambiguous words of a statute." Alvord v. Commissioner of Motor Vehicles, 84 Conn.App. 302, 308-09, 853 A.2d 548 (2004).

DEYO v. COMMISSIONER OF REVENUE SERVICES,
89 Conn. App. 903 (2005)
875 A.2d 599
KENNETH F. DEYO, JR. v. COMMISSIONER OF REVENUE SERVICES
(AC 26032)
Appellate Court of Connecticut

Dranginis, Harper and Hennessy, Js.

Argued June 1, 2005

Officially released June 28, 2005

Plaintiff's appeal from the Superior Court in the judicial district of New Britain, Hon. Arnold W. Aronson, judge trial referee.

PER CURIAM.

The judgment is affirmed.

DEYO v. COMMISSIONER OF REVENUE SERVICES, 275 Conn. 912 (2005)
KENNETH F. DEYO, JR. v. COMMISSIONER OF REVENUE SERVICES
Supreme Court of Connecticut

The plaintiff's petition for certification for appeal from the Appellate Court, 89 Conn. App. 903 (AC 26032), is denied.

Kenneth F. Deyo, Jr., pro se, in support of the petition.

Paul M. Scimonelli, assistant attorney general, in opposition.

Decided September 12, 2005